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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,338	07/02/2003	Keith Gilstrap	KG0007	5120

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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/613,338	<b>Applicant(s)</b> GILSTRAP ET AL.	
	<b>Examiner</b> Gary E. Elkins	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 16-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-12, 14, 15 and 24-27 is/are rejected.
- 7) ☒ Claim(s) 8, 9 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20030702, 20040302</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-15 and 24-27 in the reply filed on 18 October 2004 is acknowledged. Claims 16-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.
2. It is noted that the response indicated that "Claims 33-35 are generic...non-brewed beverages." Since this application does not include claims 33-35 and is not related to beverages, this sentence is considered a typographical error.

### ***Information Disclosure Statement***

3. The citation under "Other Documents" in the IDS filed 02 July 2003 has not been considered insofar as no copy is available for consideration. A copy should be supplied and/or the web page(s) referred to so that appropriate consideration can be made.

### ***Specification***

4. The disclosure is objected to because of the following informalities: on page of the specification under "Related Applications", the blanks relating to other applications should be filled in.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6, 7, 10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Samson. Samson discloses a bag enclosure including three connectors forming a hypothetical triangle. No distinction is seen between the bag claimed and that of Samson as a result of the claimed intended use of the bag with a bicycle wheel or , with respect to claim 10 which defines the wheel as “conformal” to a wheel, i.e. the bag is considered capable of receiving and conforming to a bicycle wheel of like size to the bag.

7. Claims 1, 2, 6, 7, 10-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery. Montgomery discloses a bag enclosure including three connectors (68, 68, 32a) forming a hypothetical triangle. . No distinction is seen between the bag claimed and that of Montgomery as a result of the claimed intended use of the bag with a bicycle wheel or , with respect to claim 10 which defines the wheel as “conformal” to a wheel, i.e. the bag is considered capable of receiving and conforming to a bicycle wheel of like size to the bag.

8. Claims 1, 4, 6, 7, 10, 24 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Bristol. Bristol discloses a bag enclosure including three connectors (16, 16, 19) forming a hypothetical triangle. . No distinction is seen between the bag claimed and that of Bristol as a result of the claimed intended use of the bag with a bicycle wheel or , with respect to claim 10 which defines the wheel as “conformal” to a wheel, i.e. the bag is considered capable of receiving and conforming to a bicycle wheel of like size to the bag. With respect to claims 4, 24 and 27, note is made of the standard buckles being used to secure the straps.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bristol in view of Johnston. Bristol discloses all structure of the claimed bag except the use of hook and loop fastening material to secure the straps. Johnston teaches that it is known to use hook and loop fastening material to secure straps attached to a bag. It would have been obvious to substitute hook and loop fastening material for the buckles in Bristol as taught by Johnston since hook and loop fastening material is easier to manipulate during removal and reuse. Hook and loop fastening material is notoriously well known in this art as a strap fastener.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery in view of Jackson et al. Montgomery discloses all structure of the claimed bag except formation of the bag with a shoulder strap connected to the bag using a loop and ring. Jackson et al teaches that it is known to make a bag with a shoulder strap attached to the bag using a loop and ring. It would have been obvious to make the bag of Montgomery with a shoulder strap as taught by Jackson et al to allow the bag to be carried over the shoulder.

12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bristol in view of Montgomery. Bristol discloses all structure of the claimed bag except a semi-rigid or rigid material located near the center of each face of the bag. Montgomery teaches that it is known to provide a rigid reinforcing material or reinforcement within a bag secured to a bicycle. It would

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have been obvious to provide the bag in Bristol with a reinforcement as taught by Montgomery to allow the bag to maintain its shape during transit and to protect the contents from damage.

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bristol in view of Samson. Bristol discloses all structure of the claimed bag except two of the connectors secured to a top tube of the bicycle (Bristol secures the bag to the top tube using only one connector 19). Samson teaches that it is known to secure a bag to a bicycle using two connectors attached to the top tube of a bicycle. It would have been obvious to provide two connectors as opposed to one connector in Bristol as taught by Samson to provide a more secure top securement of the bag. The provision of two connectors as opposed to one is considered prima facie obvious as a matter of duplicity.

#### ***Allowable Subject Matter***

14. Claims 8, 9 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The cited patent to Morales illustrates an enclosure attached to a bicycle.

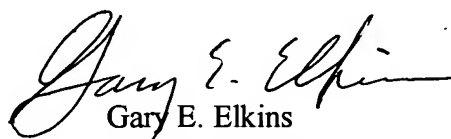
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Wednesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
09 January 2005